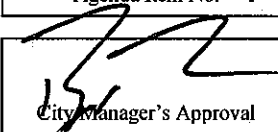




Report to the Auburn City Council

Action Item
Agenda Item No. 4
 City Manager's Approval

To: Mayor and City Council Members
From: Michael G. Colantuono, City Attorney
Date: February 22, 2010
Subject: Amended and Restated Contract with City Manager Robert Richardson

The Issue

Should the City Council approve an amended and restated contract with City Manager Robert Richardson to extend its term for two years, with no change in economic terms, and to delete obsolete language?

Conclusions and Recommendation

The City Manager's contract as amended to date is slated to expire February 10, 2012. Mr. Richardson has proposed an amendment to extend that term to February 10, 2014 to provide greater certainty for him and the City regarding the staffing of his position and to delete some obsolete language. Given the Council's previous direction that Mr. Richardson was performing admirably and the Council desired to extend his tenure with the City, this matter is placed on your consent calendar for approval. If the Council has questions or comments on the contract, I can address them before or during your February 22nd meeting.

Fiscal Implications

Because the contract's economic provisions are unchanged, this action has no fiscal impact. Mr. Richardson's salary and benefits are budgeted.

Alternatives

The Council may refuse to approve the agreement, request changes to the agreement, or give other appropriate direction on this subject.

Discussion

The City hired Robert Richardson as City Manager in December 2002 and he began work in February 2003. The Council established a set of performance objectives and other goals for the City Manager to accomplish and he has satisfied virtually all of the listed items. The Council will be meeting with Mr. Richardson to establish a new set of goals for the City Manager and City staff. On January 13th and previously, the Council met in closed session to evaluate Mr.

Richardson's performance and was of the unanimous view that he has met or exceeded the Council's expectations for his performance. Based on that positive evaluation, and in light of the Council's desire to include merit-based incentives in City compensation systems, the Council expressed its desire to extend the term of Mr. Richardson's contract.

If the Council has any questions about the revision to Mr. Richardson's agreement, please let me know.

Michael G. Colantuono, City Attorney

Attachments: Agreement in Redline Format

**FOURTH AMENDED AND RESTATED EMPLOYMENT AGREEMENT
BETWEEN THE CITY OF AUBURN AND CITY MANAGER RICHARDSON**

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RECITAL

1. On December 16, 2002 the City Council selected Robert Richardson (hereafter "City Manager") to serve as City Manager of the City of Auburn ("City"), subject to approval of an employment agreement between City and City Manager. On February 22, 2010, the City Council approved the amendment and restatement of this agreement as set forth here. Accordingly, the parties agree as follows:

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AGREEMENT

2. Effective Date

This agreement shall become effective when it has been executed by City Manager and duly approved by the City Council.

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3. Term of Employment

Pursuant to the provisions of Auburn Municipal Code Section 31.016, City Manager serves at the pleasure of City Council and on an "at will" basis during the term of this agreement, subject to the terms and provision of this agreement as set forth below. The term of this agreement is from February 24, 2003 to February 24, 2014.

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4. Duties; Hours of Work

A. City Manager shall perform those functions and duties specified by State law, the Auburn Municipal Code and by formal direction of the City Council. City Manager shall perform such duties in accordance with the highest professional and ethical standards of the city manager profession. City Manager shall not engage in any activity, which is, or which may become, incompatible with the office of City Manager, as provided for by State law. During the term of this agreement, City Manager shall be exclusively employed by the City, unless prior authorization otherwise is received from the City Council, which authorization will not be unreasonably withheld.

B. City Manager shall maintain a regular work schedule consistent with that approved for other management employees of the City. City Manager's duties may involve expenditures of time in excess of eight (8) hours per day and/or forty (40) hours per week, and may also include time outside normal office hours such as attendance at City Council meetings. City Manager shall not be entitled to additional compensation for such time.

5. Compensation

A. Until July 1, 2006, City Manager shall receive an annual salary of \$125,456, payable in equal monthly payments to be made at the same time as other management employees

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are paid. From July 1, 2006 until July 1, 2007, City Manager's annual salary shall be \$129,220; on and after July 1, 2007, City Manager's annual salary shall be \$138,265. The salary increases granted hereby reflect two considerations – a 3% increase paid at July 1, 2006 as awarded to all City management employees as a cost of living adjustment and a 7% additional increase to recognize City Manager's exemplary performance during the years he has worked for the City.

B. City Manager's compensation shall be reviewed at least annually in connection with the annual review required by section 14 below or at other times as may be determined by City Council. Further, it is understood that it is the intent of the City Council to increase salary, or other benefits referred to in this agreement, dependent on the quality of job performance by City Manager. Due to the City's current financial circumstances, however, and notwithstanding City Manager's performance, no salary or benefit increase is afforded to him following his January 2010 evaluation.

6. Health Insurance

City shall pay the full premium for health insurance for City Manager, including his eligible dependents, for health coverage under the same health plan offered to City employees.

7. Life Insurance

City shall provide term life insurance in the amount equal to twice the annual salary of City Manager. Such life insurance shall be provided through the same insurance company providing life insurance to other City employees, or by another insurer acceptable to City.

8. Management Administrative Leave

City Manager shall be entitled to ten days' management administrative leave per year. In the event such leave is not used, City Manager may receive equivalent cash compensation therefore, in full or part, at any time during the year. Management administrative leave time may not be accumulated from year to year.

9. Annual Vacation Leave

City Manager shall be entitled to fifteen days' annual vacation leave. City Manager may receive equivalent cash compensation, in full or in part, at any time during the year for unused leave. For vacation leave of more than one week at a time, City Manager must provide sufficient notice of his intended vacation absence so that the Council may approve such absence in order to avoid an extended absence of the City Manager during critical time periods.

10. Other Leaves and Benefits

All other personal leave, family leave, funeral leave, or sick leave shall be as provided to other management employees of the City. City shall afford City Manager such other benefits as are provided to other management employees of the City on the same terms as provided to those employees except as otherwise expressly provided herein.

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11. Auto

In recognition of the fact that the City Manager's normal duties require frequent use of his automobile, City Manager shall be entitled to \$400 per month as an automobile allowance. This allowance is in lieu of mileage reimbursement or other expenses that may have been incurred by City Manager in connection with his provision and use of his own automobile for City purposes. In consideration for said allowance, City Manager shall be responsible for all costs of maintenance and operation of his vehicle. City Manager shall at all times maintain automobile liability insurance on any vehicle used by him in the course of City employment. Such insurance shall have coverage limits acceptable in form and amounts to City. City Manager shall provide a certificate or evidence of such insurance to City.

12. Professional Memberships & Meetings; Other Expenses

A. City shall pay for City Manager's professional membership in the League of California Cities and International City / County Management Association. City shall pay for City Manager to attend the annual League of California Cities conference. City will pay for such other professional memberships and conference attendance as may be approved and budgeted by the City Council.

B. City recognizes that certain expenses of a non-personal and job-related nature may be incurred by City Manager. City agrees to reimburse City Manager for reasonable expenses which are authorized by the City budget, submitted to the City Council for approval, and which are supported by expense receipts, statements or personal affidavits, and audit thereof in like manner as other demands against the City.

13. Retirement Program

City shall provide the same PERS retirement benefits to City Manager as are received by other management employees of the City. City shall contribute \$155 per month into City Manager's deferred compensation plan.

14. Annual Performance Evaluation

The City Council shall evaluate City Manager's performance at least once annually. The City Council and City Manager shall annually develop mutually agreeable performance goals and criteria which the City Council shall use in reviewing City Manager's performance in the following year. It shall be City Manager's responsibility to initiate this review each year. City Manager will be afforded an adequate opportunity to discuss each evaluation with the City Council.

Deleted: City Manager may obtain data from PERS regarding enhanced pension benefits for the City Manager and other non-safety employees of the City. If he does so, City shall bargain with City Manager in good faith regarding its ability to extend such enhanced pension benefits to City Manager to recognize his superior performance and to induce him to remain in the City's employ

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15. Indemnification

City shall defend, hold harmless and indemnify City Manager against any claim, demand, judgment, or action of any type or kind arising within the course and scope of City Manager's employment to the extent required by Government Code Sections 825 and 995.

16. Other Terms and Conditions of Employment

A. The City Council may from time to time fix other terms and conditions of employment relating to the performance of City Manager, provided such terms and conditions are not inconsistent with or in conflict with the provision of this Agreement, the Auburn Municipal Code, or other applicable law.

B. The provisions of the City's Personnel Rules and Regulations ("Rules") shall apply to City Manager to the extent they explicitly apply to the position of City Manager, except that if the specific provisions of this Agreement conflict with the Rules, the terms of this Agreement shall prevail. Without limiting the generality of the exception noted in the previous sentence, however, no provision of the Rules or this Agreement shall confer upon City Manager a property right in his employment or a right to be discharged only upon cause. City Manager is an at-will employee serving at the pleasure of the City Council and may be dismissed at any time with or without cause, subject only to the provisions of this Agreement.

C. City Manager shall be exempt from paid overtime compensation and from Social Security taxes other than the mandatory Medicare portion of such taxes.

17. Termination Without Cause

The City Council may terminate City Manager's employment with the City at any time and without cause, upon ninety days' written notice to City Manager. In the event of such termination without cause, City Manager shall be entitled to a severance benefit, as follows: (a) nine monthly installments of the City Manager's current base salary; and (b) nine monthly installments of an amount equal to thirty percent of the City Manager's current base salary, in lieu of all other benefits that would have otherwise accrued during the nine-month period including, but not limited to, vacation leave, sick leave, administrative leave, deferred compensation, and other benefits. Such payments shall be made on a monthly basis at such time as other City employees are normally paid. Upon complete payment of such severance compensation, City shall have no further obligation to City Manager and City Manager shall have no claim for further compensation from City.

18. Termination With Cause

The City Council may terminate City Manager's employment with City for cause, upon ninety days' written notice to City Manager. In the event of termination of employment for cause, City shall have no obligation to continue the employment of City Manager and shall have no obligation to provide any severance compensation. For purposes of this agreement, the term "for cause" shall include any of the following: (a) use of alcohol or drugs that impedes performance

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of duties; (b) conviction of a felony, or misdemeanor involving moral turpitude, (a plea or verdict of guilty, or a conviction following a plea of nolo contendere is deemed a conviction for this purpose); (c) a proven claim of either sexual harassment or abuse of employees in violation of law or adopted City policy; (d) willful and repeated failure to carry out the lawful directives or policy decisions of the City Council; or (e) willful abandonment of the position or continued and unexcused absence from duty.

19. Voluntary Termination

City Manager may voluntarily terminate his employment, by resignation or retirement, at any time during the term of this agreement, subject to at least thirty days' written notice by City Manager to City. In such case, City shall have no further obligation to provide payments and benefits, including severance benefits, upon the effective date of termination of employment.

20. Compliance With Law

This agreement is subject to all applicable provisions of State and Federal law and to the provisions of the Auburn Municipal Code.

21. General Provisions

A. This Agreement constitutes the entire agreement between the parties. City and City Manager hereby acknowledge that they have neither made nor accepted any other promise or obligation with respect to the subject matter of this Agreement.

B. If any provision or any portion of this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of the Agreement shall be deemed severable and shall not be affected and shall remain in full force and effect.

C. Any notice to City pursuant to this Agreement shall be given in writing, either by personal service or by registered or certified mail, postage prepaid, addressed as follows:

Mayor
City of Auburn
1225 Lincoln Way, Room 8
Auburn, CA 95603-5004.

With a courtesy copy to:

Michael G. Colantuono, Esq.
Auburn City Attorney
11406 Pleasant Valley Road
Penn Valley, CA 95946-9024.

Any notice to City Manager shall be given in a like manner, and, if mailed, shall be addressed to City Manager at the address then shown in City's personnel records. For the purpose of determining compliance with any time limit stated in this Agreement, a notice shall be deemed to

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have duly given (a) on the date of delivery, if served personally, or (b) on the second (2nd) calendar day after mailing, if mailed.

D. If an action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party in that action shall be entitled to reasonable and actual attorneys' fees and costs with respect to the prosecution or defense of the action.

E. A waiver of any of the terms and conditions of this Agreement shall not be construed as a general waiver and either party shall be free to enforce any term or condition of this Agreement with or without notice to the other notwithstanding any prior waiver of that term or condition.

21. Amendments

This represents the entire agreement between the parties. Amendments to this agreement may be made at such times as approved by the City Council and City Manager and shall be in writing.

Dated: _____

Bridget Powers, Mayor

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Dated: _____

Robert Richardson

Approved as to form:

Michael G. Colantuono
City Attorney

Dated: _____

Attest:

Joseph G.R. Labrie
City Clerk

Dated: _____

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RESOLUTION NO. 10-
RESOLUTION APPROVING REVISED CONTRACT WITH THE CITY MANAGER

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn hereby approves a revised contract with Robert Richardson, City Manager. A true and correct copy of the revised contract agreement is attached hereto as Exhibit "A".

The Mayor of the City of Auburn is authorized and directed to execute the revised contract agreement on behalf of the City of Auburn.

DATED: February 22, 2010

Bridget Powers, Mayor

ATTEST:

Joseph G. R. Labrie, City Clerk

I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a regular meeting of the City Council of the City of Auburn held on the 22nd day of February, 2010 by the following vote on roll call:

Ayes:
Noes:
Absent:

Joseph G. R. Labrie, City Clerk